

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

KEY FOOD CO-OP

and

Case 22-CA-181542

**UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 464A**

ORDER

The Petition to Revoke subpoenas duces tecum B-1-U3U6T3, B-1-U3TZDV, B-1-U3VKST, and B-1-U3VE7L, filed by SuperFresh Food World, Bloomfield, New Jersey; Food Emporium, Garwood, New Jersey; SuperFresh Food World, Belleville, New Jersey; and SuperFresh Food World, Irvington, New Jersey (collectively, the Employers), is denied. The subpoenas seek information relevant to the matters under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.¹ Further, the

¹ In considering the petition to revoke, we have evaluated the subpoenas in light of the Region's statement in its opposition brief that it is willing to narrow its request in subpoena par. 8 (Belleville and Bloomfield subpoenas)/par. 7 (Garwood and Irvington subpoenas) to only the correspondence pertaining to arrangements made by the Employers with International Longshoremen's Association Local 1964 to sign up the non-supervisory employees at the four stores for membership in Local 1964, and the recognition of Local 1964 as the collective-bargaining representative of those employees. Contrary to our dissenting colleague's assumption, the Region's offer to limit the scope of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Rather, the Region's modifications appear merely to promote efficiency and provide further clarity to the parties.

Acting Chairman Miscimarra respectfully dissents from the Board majority's denial of the petition to revoke as to subpoena par. 8 (Belleville and Bloomfield subpoenas)/par. 7 (Garwood and Irvington subpoenas), which requests all correspondence between the Employers and Local 1964 pertaining to the non-supervisory employees employed at the Employers' facilities. When subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, Acting Chairman Miscimarra believes it is more appropriate for the Board to *grant* the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board

Employers have failed to establish any other legal basis for revoking the subpoenas.² See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., March 9, 2017

PHILIP A. MISCIMARRA,	ACTING CHAIRMAN
MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER

majority does here) based on a change that was communicated only after the petition to revoke is under consideration by the Board. See Sec. 11(1) (stating the Board “shall revoke” any subpoena where “the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required”). Regarding the majority’s statement that the Region’s modification served “merely to promote efficiency and provide further clarity to the parties,” he believes these efforts must be undertaken before disputes regarding a subpoena’s scope are presented to the Board in a party’s petition to revoke. Finally, Acting Chairman Miscimarra believes that granting a petition to revoke in the circumstances presented here would be without prejudice to the potential issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board’s Rules and Regulations).

In addition, Acting Chairman Miscimarra would grant the petition to revoke as to par. 6 (Belleville and Bloomfield subpoenas)/par. 5 (Garwood and Irvington subpoenas) (requesting “[a]ll employment manuals and handbooks, and acknowledgments of receipt signed by non-supervisory employees employed by [the Employers]”) except for those handbook provisions that reasonably relate to the charge allegations regarding unlawfully refusing to hire former members of United Food and Commercial Workers Local 464A, telling employees that they were represented by Local 1964, and granting recognition to Local 1964. See *Allied Waste Services of Massachusetts, LLC*, Cases 01-CA-123082, -126843 (Dec. 31, 2014).

² Regarding the request in par. 7 (Belleville and Bloomfield subpoenas)/par. 6 (Garwood and Irvington subpoenas) for employees’ applications for membership in International Longshoremens’s Association Local 1964, although we are confident that this information would not be disseminated by the Region, in the absence of a clear statement by the Region in this regard, and in an abundance of caution, we direct the Regional Director to ensure that this information is kept confidential during the investigation of the charge.